

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROSE HAYES,	:	
	:	
Plaintiff,	:	12 Civ. 4370 (LAK) (HBP)
	:	
-against-	:	OPINION AND
	:	<u>OPINION ORDER</u>
THE CITY OF NEW YORK, <u>et al.</u> ,	:	
	:	
Defendants.	:	

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PITMAN, United States Magistrate Judge:

By notice of motion dated December 23, 2013 (Docket Item 10), plaintiff moves to file an amended complaint. For the reasons stated below, the motion is granted.


Defendants have not submitted any opposition to the motion to amend. To the contrary, on February 7, 2014, defendants filed a motion for summary judgment addressed to the proposed amended complaint that was the subject of plaintiff's motion to amend (see Exhibit A to the Declaration of Assistant Corporation Counsel David M. Pollack, dated February 7, 2014 (Docket Item 17)). Because defendants have not opposed plaintiff's motion, have treated the amended complaint as if it were the operative pleading and actually litigated the viability of most of the claims asserted therein, they have impliedly consented to the amendment of the complaint. See generally Lynch

v. Dukakis, 719 F.2d 504, 508-09 (1st Cir. 1983); S.E.C. v. Rapp, 304 F.2d 786, 790 (2d Cir. 1962).

Accordingly, plaintiff's motion to amend her complaint is granted. The Clerk of the Court is directed to close Docket Item 10.

Dated: New York, New York
July 7, 2014

SO ORDERED


HENRY PITMAN
United States Magistrate Judge

Copies transmitted to:

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